

DONALD W. BAKER

FEBRUARY 28, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 7377]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7377) for the relief of Donald W. Baker, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to credit the accounts of Donald W. Baker in the sum of \$167 which represents a mileage allowance erroneously paid to him from Oakland, Calif., to Albany, N. Y., instead of from Bainbridge, Md., to Albany, N. Y., upon reenlistment for 2 years in the Navy.

STATEMENT

Donald W. Baker originally enlisted in the Naval Reserve on November 15, 1948, to serve until May 10, 1951. Mr. Baker was ordered to active duty in the Navy in 1951, and reported in accordance with those orders at the United States Naval Training Center, Bainbridge, Md., on March 5, 1952. On January 7, 1952, Mr. Baker executed an agreement to extend his enlistment. That agreement became operative on May 11, 1952, at the time he was serving on active duty at the United States Naval Training Center, Bainbridge, Md. However it appears that the extension document was not completed until June 12, 1953, at the United States Naval Hospital, Oakland, Calif. He was given a physical examination at that time which determined his fitness for reenlistment. At that time his disbursing officer at the Naval Hospital, Oakland, Calif., credited Mr. Baker with a travel allowance based on his location at Oakland, Calif.

As noted in the report furnished this committee by the Comptroller General of the United States, this payment was apparently due to an administrative error. Under applicable laws and regulations the travel allowance in this instance should have been computed on the basis of Mr. Baker's location at the time the extension would have taken effect. While the committee recognizes this fact, it is of the opinion that this is a case which merits relief. It was not any fault of Mr. Baker's that the amount was not properly credited. The formal aspects of a reenlistment physical, and a crediting of the travel allowance in California served to indicate to Mr. Baker that the procedure was that normally followed in such cases. The committee finds that Mr. Baker's case is a meritorious one, and therefore recommends that the bill be considered favorably.

STATEMENT OF SUPPORTING EVIDENCE, H. R. 7377

I, Donald W. Baker, the undersigned wish to present the following affidavit in support of the above bill requesting dismissal of repayment of \$167 to the Navy Finance Department.

A brief history of my case is as follows:

January 7, 1952, I agreed to extend my enlistment in the Navy for 2 years effective May 11, 1952, which was the expiration date of my minority enlistment. However I was assigned to Bainbridge Naval Station March 5, 1952—2 months before my minority enlistment expired.

Approximately 1 year later on June 12, 1953, I was informed by the personnel officer at Oakland, Calif., where I was then stationed, that there was no record of my extension of enlistment at Bainbridge and to have the records in order the necessary papers were drawn up to correct this oversight. This did not constitute an extension of enlistment at that time. The finance officer gave me the check in question stating it was in order.

I was released from service December 31, 1953, which was several months prior to expiration date of my enlistment due to the fact men were being released in this manner.

I received my honorable discharge papers May 10, 1954, at which time the Navy Finance Center informed me of an overpayment in amount of \$167, which they claim was made at the time the papers were drawn up in Oakland. This payment was presented to me through no effort on my part and therefore I feel the responsibility of any error rests with the Navy Department, and I respectfully request to be released of any obligation.

DONALD W. BAKER.

Witness:

MARY BAKER, *Wife.*

Sworn to before me this 19th day of December 1955 at Albany, N. Y.

HANNAH BULT,
Commissioner of Deeds,
Albany County, Albany, N. Y.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington 25, D. C., November 14, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of July 20, 1955, to the Secretary of the Navy requesting comment on H. R. 7377, a bill for the relief of Donald W. Baker.

The bill would authorize the Comptroller General of the United States to credit the accounts of Donald W. Baker in the sum of \$167, such sum representing mileage allowance erroneously paid to him from Oakland, Calif., to Albany, N. Y., instead of from Bainbridge, Md., to Albany, N. Y., upon reenlistment for 2 years in the Navy.

A review of the service record of Donald William Baker, 384 60 36, former hospitalman, United States Naval Reserve-Ready reveals that he first enlisted in the Naval Reserve on November 15, 1948, to serve during his minority until May 10, 1952, and was immediately released to inactive duty. On December 5, 1951, Mr. Baker was issued active duty orders addressed to his home of record at Albany, N. Y. He reported for active duty at the United States Naval Training Center, Bainbridge, Md., on March 5, 1952, as directed.

On January 7, 1952, Mr. Baker executed an agreement to extend his enlistment for 2 years under the provisions of the then effective Navy directive (Circular Letter 84-51), which provided in part that when an agreement to extend an enlistment was executed prior to the normal date of expiration of enlistment, the voluntary extension would become operative the day following the normal date of expiration of enlistment. Mr. Baker's enlistment of November 15, 1948, expired on May 10, 1952. His agreement to extend his enlistment became operative on May 11, 1952, at which time he was serving on active duty at the United States Naval Training Center, Bainbridge, Md., regardless of the fact that Mr. Baker's commanding officer may or may not have completed the necessary paperwork to accomplish the extension in all respects on the normal date of expiration of his enlistment. In this case there is evidence to indicate that the extension document was not completed until June 12, 1953, at United States Naval Hospital, Oakland, Calif., at which time a physical examination was given to Mr. Baker which determined that he was physically qualified for the extension of enlistment which became effective on May 11, 1952. Under the circumstances the disbursing officer at United States Naval Hospital, Oakland, Calif., erroneously credited Mr. Baker with travel allowance based on his location on June 12, 1953, which was at Oakland, Calif., rather than on his location on May 11, 1952, which was at Bainbridge, Md.

Under the provisions of the Joint Travel Regulations for the Uniformed Services travel allowance is payable to an enlisted member who extends his enlistment for a period of 2 or more years. Such payment is authorized for the distance from the place the extension takes effect or becomes operative to either the place of entry into the service or the home of record, at the election of the member. Since Mr. Baker's extension of enlistment became operative while he was serving at Bainbridge, Md., the payment of travel allowance based on any other place is contrary to the intent of section 303 (a) of the Career Compensation Act of 1949, which permitted such allowance to be paid from the location of the individual at the time the extension of enlistment becomes operative to either the home or the place from which ordered to active duty regardless of whether the travel was actually performed.

In view of the above, it is considered that the enactment of H. R. 7377 would provide special benefits to Mr. Baker which would be denied to other members of the uniformed services under similar circumstances. Accordingly, the Department of the Navy recommends against enactment of H. R. 7377.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

For the Secretary of the Navy.

Sincerely yours,

IRA H. NUNN,
Rear Admiral, USN.
Judge Advocate General of the Navy.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington 25, September 6, 1955.

Hon. EMANUEL CELLER,
Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Further reference is made to your letter of July 29, 1955, requesting a factual report on H. R. 7377, 84th Congress, entitled "A bill for the relief of Donald W. Baker." Also, you request our opinion as to the merits of the bill.

The bill would authorize and direct us to credit the accounts of Donald W. Baker in the sum of \$167. Such sum represents the approximate difference (exact amount is \$167.16) between mileage allowance from Oakland, Calif., to Albany, N. Y. (\$184.56), paid to Mr. Baker, and the mileage allowance to which he was entitled from Bainbridge, Md., to Albany, N. Y. (\$17.40), incident to his

extension of enlistment for 2 years in the United States Naval Reserve effective May 11, 1952.

A report from the Bureau of Naval Personnel shows that Mr. Baker was serving in a minority enlistment in the United States Naval Reserve entered into on November 15, 1948, which enlistment apparently was due to expire on May 10, 1952, the day prior to his 21st birthday, and that on January 7, 1952, while in an inactive duty status, he executed form NAVSANDA-513 (agreement to extend enlistment) by which he agreed to extend his enlistment for 2 years, the extension to become effective on May 11, 1952. Mr. Baker was on active duty at Bainbridge, Md., on May 11, 1952.

It appears that on June 12, 1953, while stationed at the United States Naval Hospital, Oakland, Calif., he was examined and found physically qualified for his extension of enlistment. In that connection, article C-1406 of the Bureau of Naval Personnel Manual provides that a physical examination is required for extension of enlistment but that failure to complete form NAVSANDA-513 with respect to the physical examination does not affect the legality of the extension or change its effective date. It further appears that shortly after Mr. Baker's physical examination and upon completion of the form extending his enlistment, the disbursing officer at the United States Naval Hospital, Oakland, Calif., credited Mr. Baker's pay account in the amount of \$184.56 as mileage allowance from Oakland, Calif., to Albany, N. Y. (3,076 miles at 6 cents per mile), as shown on his pay record for the period July 1 to December 31, 1953. On the same pay record he was properly credited with a like amount (\$184.56) as mileage allowance from Oakland, Calif., to Albany, N. Y., incident to his release from active duty on December 31, 1953.

Paragraph 4156 (formerly 4153), case 10, of the Joint Travel Regulations for the Uniformed Services, issued by the Secretaries concerned pursuant to section 303a of the Career Compensation Act of 1949, 63 Statutes at Large 813, provides in pertinent part, as follows:

"CASE 10. RIGHTS TO MILEAGE ON EXTENSION OF ENLISTMENT

"An enlisted member who has extended his current contract for a period of 2 or more years from the date of expiration will be entitled to mileage, if otherwise payable, upon completion of original term of service from the place where the first extension takes effect to the place of entry into the service or to the home of record, as he may elect, regardless of whether or not the travel is performed. * * * Under such provisions, a member is entitled to mileage only from the place where the first extension of an enlistment takes effect to the place of entry into the service or to the home of record, as he may elect.

Since Mr. Baker's agreement to extend his enlistment became effective on May 11, 1952, and since on that date he was on duty at Bainbridge, Md., he was entitled, under the applicable law and regulations, to a mileage allowance from Bainbridge, Md., to Albany, N. Y., his home of record, a distance of 290 miles at 6 cents per mile, or \$17.40. Having received credit in the sum of \$184.56 as a mileage allowance from Oakland, Calif., to Albany, N. Y., incident to his extension of enlistment, he became indebted to the Government in the sum of \$167.16 (difference between \$184.56 and \$17.40). Hence, our Division of Audits took an exception to the payment on Mr. Baker's pay record, the amount of the exception being \$167.16 instead of \$167 as indicated by the bill.

It appears from the record that the erroneous payment made in Mr. Baker's case was due to an administrative error. It long has been recognized that the United States cannot be bound or estopped by an erroneous payment made through administrative error by its officers, whether made under mistake of fact or mistake of law, and parties receiving such erroneous payments acquire no right to them but are liable in equity and good conscience to refund them.

While it is unfortunate that Mr. Baker's account was not properly credited, we feel that special relief in his case would be discriminatory as against many other military personnel whose accounts have been erroneously credited and who have liquidated the resulting debts to the United States. Accordingly, we do not favor the enactment of H. R. 7377.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General,
of the United States.